IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant(s)	:	Vasco VOLLMER et al.
Appl. No.	:	09/913,484
Filed	:	November 20, 2001
For	:	METHOD OF EFFECTIVE UTILIZATION OF DATA PACKETS OF DIFFERING CAPACITY AND A MASTER STATION AND SUBSCRIBER DEVICE FOR A COMMUNICATION SYSTEM
Art Unit	:	2532
Examiner	:	Kevin T. BATES
Conf. No.	:	1416

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Alexandria, VA 22313-1450

APPELLANTS' REPLY BRIEF IN RESPONSE TO
EXAMINER'S ANSWER (UNDER 37 C.F.R. § 41.41)

SIR:

In response to the Examiner's Answer mailed on April 23, 2007, regarding the above-identified application, Applicants submit the following arguments in support of the appeal of the final rejection.

ARGUMENT

The issue presented for review in this case is whether claims 13-25 are anticipated under 35 U.S.C. § 102(e) by U.S. Patent No. 6,721,334 ("Ketcham"). Applicants respectfully submit that this rejection should be reversed for the following reasons.

To anticipate a claim under § 102(e), a single prior art reference must identically disclose each and every claim feature. See Lindeman Machinenfabrik v. American Hoist and Derrick, 730 F.2d 1452, 1458 (Fed. Cir. 1984). If any claimed feature is absent from a prior art reference, it cannot anticipate the claim. See Rowe v. Dror, 112 F.3d 473, 478 (Fed. Cir. 1997). Anticipation requires the presence in a single prior art reference disclosure of each and every feature of the claimed subject matter, arranged exactly as in the claim. Lindeman, 703 F.2d 1458 (Emphasis added). Additionally, not only must each of the claim features be identically disclosed, an anticipatory reference must also *enable* a person having ordinary skill in the art to practice the claimed subject matter, as explained above. See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986). To the extent that the Examiner may be relying on the doctrine of inherent disclosure for the anticipation rejection, the Examiner must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art." (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Claim 13 recites a method of effective utilization of data packets of differing capacity, which method includes, in relevant parts, "filling at least some **containers for the user data packets** each with a plurality of **control data packets** in a transmission frame **according to an agreement between the master station and at least one of the subscribers**, the **agreement stipulating which of the containers for the user data packets are filled with control data packets**, the control data packets which are stored in the containers for the user data packets being combined in a subframe, an external format of the subframe being adapted to a format of the user data packets." Independent claims 24 and 25 recite substantially corresponding features.

In the "Response to Argument" section of the Examiner's Answer, the Examiner initially acknowledges that the "claimed invention states . . . 'filling **some containers for the user data packets** each with a plurality of control data packets,'"

(Examiner's Answer, p. 8), but the Examiner subsequently contradicts himself and contends that the "claimed invention teaches 'filling at least **some containers**' with 'a plurality of control data packets,'" and that "**[i]n order to meet this limitation** the reference **only needs to show that one of the aggregate packets can contain a plurality of control packets** some of the time." (Examiner's Answer, p. 9). It is obvious that the Examiner is <u>**not addressing all of the claimed limitations**</u>, i.e., the Examiner is clearly ignoring the fact that the claimed limitations include "filling at least **some containers <u>for the user data packets</u>**," rather than merely reciting "**filling at least some containers**" as asserted by the Examiner. To the extent the Examiner may be implicitly contending that "filling at least **some containers <u>for the user data packets</u>**" is <u>equivalent</u> to merely "**filling at least some containers**," such an interpretation clearly violates the "all limitations" rule: anticipation requires the presence in a single prior art reference disclosure of *each and every limitation* of the claim invention, *arranged as in the claim*. See <u>Lindeman Machinenfabrik v. American Hoist and Derrick</u>, 730 F.2d 1452, 1458 (Fed. Cir. 1984). Even in the context of the "doctrine of equivalents," the "all limitations rule" restricts "the doctrine of equivalents by preventing its application when doing so would vitiate a claim limitation." <u>Primos, Inc. v. Hunter's Specialties, Inc.</u>, 451 F.3d 841, 850 (Fed. Cir. 2006). Accordingly, there is simply no tenable basis for the Examiner to assert that the claimed feature of "filling at least **some containers <u>for the user data packets</u>**" is <u>equivalent</u> to merely "**filling at least some containers**."

In view of the above discussion, it is also patently obvious that the claimed feature of "filling at least **some containers <u>for the user data packets</u>**" cannot be met by merely showing "**that one of the aggregate packets [of Ketcham] can contain a plurality of control packets** some of the time." While Ketcham uses aggregate packets (each of which includes at least two packets) to reduce time delays due to contention periods, this has nothing to do with the present claimed feature of "filling at least some **containers for the user data packets** each with a plurality of **control data packets** in a transmission frame **according to an agreement between the master station and at least one of the subscribers**, the **agreement stipulating which of the containers for the user data packets are filled with control data packets**." The present claimed invention facilitates an efficient transmission of a large amount of control information by providing that <u>unused capacity of containers assigned for user data packets may be filled with control data packets</u>, which arrangement, however, requires an agreement between a master station and the subscribers regarding which containers normally assigned for user data packets are filled with control data packets. By <u>identifying **which**</u>

containers normally assigned for user data packets are filled with control data packets, it is ensured that <u>control data packets contained in the containers for user data packets are properly interpreted as control data</u>, and not as user data. There is not a shred of suggestion in Ketcham regarding this feature of the present claimed invention.

In addition to the above, the Examiner makes several contentions which are completely unsupported by any actual teachings of the applied Ketcham reference. First, with respect to the example shown in connection with Figs. 5 and 6 of Ketcham, the Examiner contends that "[w]hile being described as probe and response packets (Column 9, lines 7-58), it is clear that depending on the payload of the packet, <u>what is shown in those figures is the normal format for all packets being sent over the network</u>." (Examiner's Answer, pp. 8-9). However, this contention is completely unsupported by the actual disclosure: there is not a shred of suggestion in Ketcham that what is shown in Figs. 5 and 6 is "<u>the normal format for all packets being sent over the network</u>." Second, with respect to the Examiner's contention that "according to Figure 7, <u>the packet on the left is a container . . . [which] container is the same format as any other packet of the network</u>," (Examiner's Answer, p. 9), Applicants note that there is no actual support for this contention.

Independent of the above, with respect to the claimed limitation that "filling at least some containers for the user data packets each with a plurality of control data packets in a transmission frame" is performed "**<u>according to an agreement</u> between the master station and at least one of the subscribers, the <u>agreement stipulating which of the containers for the user data packets are filled with control data packets</u>**," the Examiner contends that "an agreement" is a "very broad concept which the examiner must consider with the broadest possible interpretation," and therefore an "agreement in terms of a data packet network <u>can mean anything</u> . . . [including] <u>any type of mutual understanding that the nodes share</u>," i.e., whether a sending router and a receiving router both understand that the receiving router can support aggregate packets. In addition, the Examiner further contends that "the idea of the agreement 'stipulating which containers for the user data packets are filled with control data packets,' **this idea is inherent with the idea of the second router agreeing that it supports aggregate packets**." Applicants respectfully submit that the Examiner's contentions are both legally and factually incorrect, as explained in detail below.

Contrary to the Examiner's contention, in determining whether a claim is anticipated, the claim must be given its broadest reasonable interpretation **consistent with the specification**. In re Weiss, 989 F.2d 1202, 26 U.S.P.Q. 2d 1885 (Fed. Cir. 1993). The broad interpretation may not expand the meaning of the claim **beyond that which was intended by the inventor as set forth in the specification**. Id. In addition, the words of a claim must be given their plain meaning, unless the plain meaning is inconsistent with the specification. In re Zletz, 893 F.2d 319, 321 (Fed. Cir. 1989). Applying these proper criteria for interpretation, there is no way a person of ordinary skill in the art would interpret the claimed limitation of "**according to an agreement between the master station and at least one of the subscribers, the agreement stipulating which of the containers for the user data packets are filled with control data packets**," as encompassing "any type of mutual understanding that the nodes share," i.e., whether a sending router and a receiving router both understand that the receiving router can support aggregate packets, as asserted by the Examiner. Initially, there is no way that one of ordinary skill in the art would interpret the plain language of "the **agreement stipulating which of the containers for the user data packets are filled with control data packets**" as being satisfied by a mere understanding between a sending router and a receiving router that the **receiving router can support aggregate packets**, particularly since a mere understanding with respect to the capability to support aggregate packets **has nothing to do** with "**which of the containers for the user data packets are filled with control data packets**." In addition, the Applicants' Substitute Specification clearly indicates that an agreement with respect to "which of the containers for the user data packets are filled with control data packets" is achieved by: 1) having one terminal announce it in a preceding control data packet; 2) announcing the mode in header field of a user data packet; 3) transmitting a request through a terminal to master station to be able to fill a container for user data packets with control data packets; and 4) by establishing a fixed agreement that after a certain number of requests of control data packets by a terminal, instead a container for user data packets is assigned by master station for filling with control data packets. (Substitute Specification, p. 5, l. 7-33). As clearly explained in the specification, the claimed "**agreement stipulating which of the containers for the user data packets are filled with control data packets**" directly relates to the information concerning the **identification of the specific container**, and it **has nothing to do** with a mere understanding with respect to the capability to support aggregate packets.

In addition to the above, to the extent the Examiner further contends that "the idea of the agreement 'stipulating which containers for the user data packets are filled with control data packets,' **this idea is inherent with the idea of the second router agreeing that it supports aggregate packets**, . . . [because] an agreement to support the transmission of these aggregated packets is an agreement and a stipulation that **these aggregate packets are going to contain** a plurality of single packets combined together, **thus a container filled with a plurality of control data packets**," (Examiner's Answer, p. 11), Applicants note that this contention is completely without merit. In order to rely on the doctrine of inherent disclosure for the anticipation rejection, the Examiner must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art." (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)). There is no suggestion in Ketcham that an aggregate packet necessarily has to contain any control data packet, and thus an agreement to support the transmission of these aggregated packets is **not** "an agreement and a stipulation that **these aggregate packets are going to contain** a plurality of single packets combined together, **thus a container filled with a plurality of control data packets**." Even if one assumed for the sake of argument that an aggregate packet did contain a control data packet, a mere understanding with respect to the capability to support aggregate packets provides no indication whether an aggregate packet actually contains a control data packet, so the mere understanding with respect to the capability to support aggregate packets cannot possibly be equivalent to "the **agreement stipulating which of the containers for the user data packets are filled with control data packets**."

Independent of the above, nothing in Ketcham even remotely suggests "the **control data packets which are stored in the containers for the user data packets** being **combined in a subframe, an external format of the subframe adapted to a format of the user data packets**." To the extent the Examiner once again relies on Fig. 7 of Ketcham as disclosing the above-referenced claimed feature, Applicants once again note that the Examiner is ignoring the actual claim language: there is simply no suggestion in Ketcham (including Fig. 7) that any "**control data packets which are stored in the containers for the user data packets**" are "combined in a subframe," let alone that "an external format of the subframe [is] adapted to a format of the user data packets."
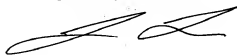
In view of the foregoing, it is respectfully submitted that Ketcham completely fails to anticipate claim 13 and its dependent claims 14-23, as well as claims 24 and 25 which recited features substantially corresponding to the above-discussed features of claim 13. Accordingly, it is respectfully requested that the anticipation rejection of claims 13-25 should be reversed.

CONCLUSION

For the preceding reasons, it is respectfully submitted that the rejections of claims 13-25 under 35 U.S.C. § 102(e) should be reversed.

While no fees are believed to be due in connection with this paper, the Office is authorized to charge any fees deemed necessary in connection with this paper to Deposit Account No. 11-0600 of Kenyon & Kenyon LLP.

Respectfully submitted,

(R.No. 36,197)

Dated: June 20, 2007

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Date: June 2.0 2007   Reg. No. 36,197

Signature:_____
                    Jong H. Lee

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In view of the above discussion, it is also patently obvious that the claimed feature of "filling at least **some containers for the user data packets**" cannot be met by merely showing "**that one of the aggregate packets [of Ketcham] can contain a plurality of control packets** some of the time." While Ketcham uses aggregate packets (each of which includes at least two packets) to reduce time delays due to contention periods, this has nothing to do with the present claimed feature of "filling at least some **containers for the user data packets** each with a plurality of **control data packets** in a transmission frame **according to an agreement between the master station and at least one of the subscribers, the agreement stipulating which of the containers for the user data packets are filled with control data packets.**" The present claimed invention facilitates an efficient transmission of a large amount of control information by providing that unused capacity of containers assigned for user data packets may be filled with control data packets, which arrangement, however, requires an agreement between a master station and the subscribers regarding which containers normally assigned for user data packets are filled with control data packets. By identifying **which**

containers normally assigned for user data packets are filled with control data packets, it is ensured that control data packets contained in the containers for user data packets are properly interpreted as control data, and not as user data. There is not a shred of suggestion in Ketcham regarding this feature of the present claimed invention.

In addition to the above, the Examiner makes several contentions which are completely unsupported by any actual teachings of the applied Ketcham reference. First, with respect to the example shown in connection with Figs. 5 and 6 of Ketcham, the Examiner contends that "[w]hile being described as probe and response packets (Column 9, lines 7-58), it is clear that depending on the payload of the packet, what is shown in those figures is the normal format for all packets being sent over the network." (Examiner's Answer, pp. 8-9). However, this contention is completely unsupported by the actual disclosure: there is not a shred of suggestion in Ketcham that what is shown in Figs. 5 and 6 is "the normal format for all packets being sent over the network." Second, with respect to the Examiner's contention that "according to Figure 7, the packet on the left is a container . . . [which] container is the same format as any other packet of the network," (Examiner's Answer, p. 9), Applicants note that there is no actual support for this contention.

Independent of the above, with respect to the claimed limitation that "filling at least some containers for the user data packets each with a plurality of control data packets in a transmission frame" is performed "according to an agreement between the master station and at least one of the subscribers, the agreement stipulating which of the containers for the user data packets are filled with control data packets," the Examiner contends that "an agreement" is a "very broad concept which the examiner must consider with the broadest possible interpretation," and therefore an "agreement in terms of a data packet network can mean anything . . . [including] any type of mutual understanding that the nodes share," i.e., whether a sending router and a receiving router both understand that the receiving router can support aggregate packets. In addition, the Examiner further contends that "the idea of the agreement 'stipulating which containers for the user data packets are filled with control data packets,' this idea is inherent with the idea of the second router agreeing that it supports aggregate packets." Applicants respectfully submit that the Examiner's contentions are both legally and factually incorrect, as explained in detail below.

Contrary to the Examiner's contention, in determining whether a claim is anticipated, the claim must be given its broadest reasonable interpretation **consistent with the specification**. In re Weiss, 989 F.2d 1202, 26 U.S.P.Q. 2d 1885 (Fed. Cir. 1993). The broad interpretation may not expand the meaning of the claim **beyond that which was intended by the inventor as set forth in the specification**. Id. In addition, the words of a claim must be given their plain meaning, unless the plain meaning is inconsistent with the specification. In re Zletz, 893 F.2d 319, 321 (Fed. Cir. 1989). Applying these proper criteria for interpretation, there is no way a person of ordinary skill in the art would interpret the claimed limitation of "**according to an agreement** between the master station and at least one of the subscribers, the **agreement stipulating which of the containers for the user data packets are filled with control data packets**," as encompassing "any type of mutual understanding that the nodes share," i.e., whether a sending router and a receiving router both understand that the receiving router can support aggregate packets, as asserted by the Examiner. Initially, there is no way that one of ordinary skill in the art would interpret the plain language of "the **agreement stipulating which of the containers for the user data packets are filled with control data packets**" as being satisfied by a mere understanding between a sending router and a receiving router that the **receiving router can support aggregate packets**, particularly since a mere understanding with respect to the capability to support aggregate packets **has nothing to do** with "**which of the containers for the user data packets are filled with control data packets**." In addition, the Applicants' Substitute Specification clearly indicates that an agreement with respect to "which of the containers for the user data packets are filled with control data packets" is achieved by: 1) having one terminal announce it in a preceding control data packet; 2) announcing the mode in header field of a user data packet; 3) transmitting a request through a terminal to master station to be able to fill a container for user data packets with control data packets; and 4) by establishing a fixed agreement that after a certain number of requests of control data packets by a terminal, instead a container for user data packets is assigned by master station for filling with control data packets. (Substitute Specification, p. 5, l. 7-33). As clearly explained in the specification, the claimed "**agreement stipulating which of the containers for the user data packets are filled with control data packets**" directly relates to the information concerning the **identification of the specific container**, and it **has nothing to do** with a mere understanding with respect to the capability to support aggregate packets.

In addition to the above, to the extent the Examiner further contends that "the idea of the agreement 'stipulating which containers for the user data packets are filled with control data packets,' **this idea is inherent with the idea of the second router agreeing that it supports aggregate packets**, . . . [because] an agreement to support the transmission of these aggregated packets is an agreement and a stipulation that **these aggregate packets are going to contain** a plurality of single packets combined together, **thus a container filled with a plurality of control data packets**," (Examiner's Answer, p. 11), Applicants note that this contention is completely without merit. In order to rely on the doctrine of inherent disclosure for the anticipation rejection, the Examiner must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics <u>necessarily</u> flow from the teachings of the applied art." (<u>See</u> M.P.E.P. § 2112; emphasis in original; <u>see also</u> <u>Ex parte Levy</u>, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)). There is no suggestion in Ketcham that an aggregate packet <u>necessarily has to contain any control data packet</u>, and thus an agreement to support the transmission of these aggregated packets is <u>**not**</u> "an agreement and a stipulation that **these aggregate packets are going to contain** a plurality of single packets combined together, **thus a container filled with a plurality of control data packets**." Even if one assumed for the sake of argument that an aggregate packet did contain a control data packet, a <u>mere understanding with respect to the capability</u> to support aggregate packets provides <u>no indication</u> <u>whether an aggregate packet actually contains a control data packet</u>, so the mere understanding with respect to the capability to support aggregate packets cannot possibly be equivalent to "the <u>**agreement stipulating which of the containers for the user data packets are filled with control data packets**</u>."

Independent of the above, nothing in Ketcham even remotely suggests "the **control data packets which are stored in the containers for the user data packets** being **combined in a subframe, an external format of the subframe adapted to a format of the user data packets**." To the extent the Examiner once again relies on Fig. 7 of Ketcham as disclosing the above-referenced claimed feature, Applicants once again note that the Examiner is ignoring the actual claim language: there is simply no suggestion in Ketcham (including Fig. 7) that any "**control data packets which are stored in the containers for the user data packets**" are "**combined in a subframe**," let alone that "an external format of the subframe [is] adapted to a format of the user data packets."

In view of the foregoing, it is respectfully submitted that Ketcham completely fails to anticipate claim 13 and its dependent claims 14-23, as well as claims 24 and 25 which recited features substantially corresponding to the above-discussed features of claim 13. Accordingly, it is respectfully requested that the anticipation rejection of claims 13-25 should be reversed.

CONCLUSION

For the preceding reasons, it is respectfully submitted that the rejections of claims 13-25 under 35 U.S.C. § 102(e) should be reversed.

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Respectfully submitted,

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Dated: June 20, 2007

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